RECENT IMPORTANT DECISIONS.

BANKRUPTCY—RIGHTS OF ACTION PASSING TO TRUSTEE—INJURY TO PROPERTY.—Prior to their bankruptcy, a stock and bond brokerage firm had been induced by false representations, made by another firm engaged in the same business, to buy from the latter, bonds that had no real value. An action in tort, arising out of this transaction and brought by the former firm was pending at the time that firm went into bankruptcy. *Held,* that the right of action passed to the trustee, as one arising out of an injury to property. *In re Gay* (1910), — D. C. D., —, 182 Fed. 260.

This case was decided under § 70 subdivision a, of the Bankruptcy Act of 1898. That section and subdivision provide that the trustee shall be vested by operation of law, upon his appointment and qualification, with the title of the bankrupt to all,—(b) rights of action arising upon contract or from the unlawful taking or detention of, or injury to, his property. It appears well settled that under this section, actions for purely personal torts will not pass to the trustee, while actions for injuries to the property or estate of the bankrupt will. REMINGTON, BANKRUPTCY, §§ 1019, 1020. But between these two classes of actions there is a debatable ground which includes actions for deceit and fraudulent representation. Under a somewhat similar provision in the Bankruptcy Act of 1867, it has been held that actions by the bankrupt for deceit pending at the time of bankruptcy do not pass to the assignee. *In re Crockett,* Fed. Cas. 3,402, 2 B. R. 75; *In re Brick,* 4 Fed. 804; *Tufts* v. *Matthews,* 10 Fed. 609; contra, *Hyde* v. *Tuffts,* 45 N. Y. Super. Ct. 56. The question upon which the courts divide is, whether an action for deceit is one for a purely personal tort or one for an injury to property. In *Cleland* v. *Anderson,* 66 Neb. 252, 92 N. W. 306, 312, the court uses those causes of action which survive and may be enforced by the personal representative as a test in determining what causes of action pass to the trustee in bankruptcy. That this does not afford the means for a very satisfactory solution in the present case, is seen by the contrariety of opinion which exists among the courts, as to whether causes of action for deceit survive to the personal representative of the deceased. That such actions do survive, see *Twycross* v. *Grant,* 4 C. P. Div. 40; *Baker* v. *Crandall,* 78 Mo. 584; contra, *Newsom* v. *Jackson,* 29 Ga. 61; *Cutting* v. *Tower,* 14 Gray 183; *Henshaw* v. *Miller,* 17 How. 212. The term, "injuries to property" as employed in the codes in force in the American States seems to be generally understood as embracing actions for deceit. POMEROY, CODE REMEDIES, § 389; *Cleveland* v. *Barrows,* 59 Barb. 364; *Gilbert* v. *Loberg,* 83 Wis. 189, 53 N. W. 500. See also, 8 MICH. L. REV. 666. That an action for deceit, such as was involved in the principal case, should pass to the trustee under the present bankruptcy act would seem a reasonable conclusion after taking into consideration what the New York court said in *Hyde* v. *Tuffts,* supra: "It would present an anomalous case, if the plaintiff, ruined by the defendant's fraud and having been discharged in bankruptcy through his inability to pay his debts, should now be

allowed to recover to his own use the money he paid (as a consequence of the deceit) * * * and leave his creditors helpless and without remedy."

BANKS AND BANKING—WHO MAY QUESTION THE POWER OF NATIONAL BANKS TO TAKE REAL ESTATE IN TRUST.—Action to set aside a trust deed of real property to a national bank and another deed to other defendants, made by the bank in pursuance of the trust. *Held,* that, although under U. S. Rev. Stat. § 5137, U. S. Comp. Stat. 1901, p. 3460, a national bank has no power to acquire and hold title to real estate in trust, yet the United States alone can object to the lack of power of a national bank to accept a conveyance of realty to be so held. *Kerfoot* v. *Farmers' & Merchants' Bank, First Nat. Bank of Trenton, Missouri, et al.* (1910), 31 Sup. Ct. 14.

This case affirmed the opinion of the Supreme Court of Missouri, in *Hall* v. *F. & M. Bank et al.,* 145 Mo. 418, 46 S. W. 1,000. § 5137 of U. S. Rev. Stat. provides that a national banking association may purchase, hold, and convey real estate for certain specified purposes, "and for no other." Both the Missouri and the U. S. courts held that taking realty to hold in trust is not for one of those specified purposes. Yet it does not follow that the first deed was a nullity and that it failed to convey title to the property to the bank. It is a well settled principle that only the government can complain of an ultra vires holding of realty by a corporation, where the conveyance has been made and the transaction has been fully executed. 8 HARV. L. REV. 15; 8 MICH. L. REV. 407; *Knowles* v. *Northern Tex. Tract. Co.* (Tex. Civ. App.), 121 S. W. 232; *Pere Marquette Railroad Co.* v. *Graham,* 136 Mich. 444; *Leazure* v. *Hillegas,* 7 Serg. & R. (Pa.) 313; *Baird* v. *The Bank of Washington,* 11 id. 411. Several cases are cited as contra in 1 WILGUS, PRIV. CORP. 1019—note e; *State* v. *Hudson Land Co.,* 19 Wash. 85, 52 Pac. 574. The Federal Courts have applied this general principle frequently, but we know of no previous instance where the Supreme Court has had before it a case directly involving the holding of realty by a national bank for a purpose prohibited by § 5137. *Union Nat. Bank* v. *Matthews,* 98 U. S. 621, 25 L. ed. 188, is sometimes cited for a wider proposition than it laid down. It was expressly stated in that case that the holding referred to § 5136 and not to § 5137. § 5136 impliedly prohibits loans on real estate security, but the court followed the general rule that only the U. S. can complain of a violation of that section. The following cases, cited by Justice HUGHES in the principal case, follow the same rule, but do not decide a case under § 5137: *Nat. Bank* v. *Whitney,* 103 U. S. 99, 26 L. Ed. 443; *Swope* v. *Leffingwell,* 105 U. S. 3, 26 L. Ed. 939; *Fritts* v. *Palmer,* 132 U. S. 282, 33 L. Ed. 317, 10 Sup. Ct. 93; *Reynolds* v. *First Nat. Bank,* 112 U. S. 405, 28 L. ed. 733, 5 Sup. Ct. 213, involved § 5137, but, in that case, the land was held by the bank for a purpose permitted by that section, although a dictum was to the same effect as the holding in the principal case. For other cases, see 5 Fed. Stat. Ann. 93. For holdings of State courts, construing §§ 5136 and 5137, see *Wroten's Ass'nee* v. *Armat,* 31 Grat. 228; *Hennessy* v. *City of St. Paul,* 54 Minn. 219, 55 N. W. 1123; *Minn. Threshing Mach. Co.* v. *Jones,* 95 Minn. 127, 103 N. W. 1017.